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6 **DISTRICT COURT OF GUAM**  
7 **TERRITORY OF GUAM**

8 VAATAUSILI MARK ALAIMALO,

9 Defendant-Petitioner,

10 vs.

11 UNITED STATES OF AMERICA,

12 Plaintiff-Respondent.  
13

Criminal Case No. 96-00039

Civil Case Nos. 99-00106  
03-00044  
06-00034

**ORDER**

14 This matter comes before the court with respect to Petitioner Vaatausili Mark Alaimalo's  
15 ("Alaimalo") Notice of Appeal regarding this Court's Order filed November 14, 2006. *See* Docket  
16 Nos. 151 and 145 respectively. A Notice of Appeal shall be construed as an Application for a  
17 Certificate of Appealability. *See*, FED. R. APP. P. 22(b). A certificate of appealability may be issued  
18 from a final order in a proceeding under § 2255 "only if the applicant has made a substantial  
19 showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

20 The Ninth Circuit has expressly indicated with respect to this case that "no petition for  
21 rehearing or motion for reconsideration shall be filed or entertained in this case." *See* Docket No.  
22 138. Alaimalo has not substantially demonstrated the denial of his constitutional rights, pursuant  
23 to 28 U.S.C. § 2253(c)(2). Nor has he demonstrated that the issues surrounding this court's  
24 dismissal of Alaimalo's § 2255 petition<sup>1</sup> is "debatable among jurists of reason." *See, Jennings v.*

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26 <sup>1</sup> Alaimalo initially filed three separate documents entitled (1) "Motion to re-open via Federal  
27 Rule of Civil Procedure 60(b)(4)"; (2) "Petition and Complaint Requesting a 'Certificate of  
28 Innocence'"; and (3) "Motion to leave to proceed 'In Forma Pauperis' Poor Person". *See* Docket  
Nos. 141, 142, and 143. The court recognized that Alaimalo's "60(b)" motion and request for a  
"certificate of innocence" were in reality attempting to state a claim for a successive § 2255 motion

1 *Woodford*, 290 F.3d 1006, 1010 (9<sup>th</sup> Cir. 2002). Accordingly, Alaimalo's motion for a certificate  
2 of appealability is DENIED.

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4 **SO ORDERED.**



/s/ Frances M. Tydingco-Gatewood  
Chief Judge  
Dated: Mar 26, 2007

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27 and were more properly treated as such. The matters were dismissed for lack of jurisdiction as  
28 Alaimalo failed to obtain authorization from the Ninth Circuit Court of Appeals to file a successive  
petition.